

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Annette Randolph, #279528,)	C.A. #0:09-2928-PMD
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
Warden, Leath Correctional Institution,)	
)	
Respondent.)	
)	

This matter is before the court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Paige J. Gossett whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In the Report, Magistrate Judge Gossett recommends that the Petition be dismissed without prejudice and without issuance and service of process. Petitioner filed her timely objections on December 22, 2009.

In conducting this review, the court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendations as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court’s review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge’s findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted). In light of this standard, the Court has reviewed, *de novo*, the Report and the objections thereto. The Court accepts the Report. Accordingly, the magistrate judge’s Report is incorporated into

this order.

IT IS THEREFORE ORDERED that the Petition for writ of habeas corpus in this case be **DISMISSED** without prejudice and without issuance and service of process upon respondent.

IT IS FURTHER ORDERED that a certificate of appealability is denied because petitioner has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(b)(2).

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

January 19, 2010
Charleston, South Carolina